EDITOR'S NOTE

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86-695

NO._____

Supreme Court, U.S.
FILED
OCT 1 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

OCTOBER TERM 1986

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

V.

LINNE' L. HANSEN, SUSAN G. HANSEN
and LAURA J. HANSEN,

Defendants/Appellants.

ON APPEAL FROM THE DISTRICT COURT OF THE

WESTERN DISTRICT OF WISCONSIN

APPENDIX

CITIZENS PRO SE

LINNE' L. HANSEN

SUSAN G. HANSEN

LAURA J. HANSEN
by her corporal
father and Next
Friend, ALAN A.
HANSEN

W 2856 Tower
Medford, WI 54451

715/ 427-3240

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALAN A. HANSEN;
LAURA HANSEN; SUSAN HANSEN;
MILTON T. HANSEN; MILTON R.
HANSEN: ans ALAN HANSEN, and
LINNE' HANSEN, as Trustee
for Larchwood Pure Trust;
STATE OF WISCONSIN (Depart-
ment of Revenue), 1/

Defendants,

v.

UNITED STATES OF AMERICA,
WILLIAM FRENCH SMITH,
Attorney General of the United
States of America, JOHN R. BYRNES,
United States Attorney, JEFFREY W.
ANDERSON, Assistant U.S. Attorney,
and JEFFREY D. SNOW, Trial Attorney, 2/

Third-Party Defendants.

STATUS CONFERENCE ORDER

83-C-842-C

- -

1/ The record does not show that any of the named defendants other than defendants Alan Hansen and Linne' Hansen has ever been served.

2/ In the caption of his answer and counterclaim, Linne' Hansen names as third-party defendants William French Smith, John R, Byrnes, Jeffrey Anderson and Jeffrey Snow. Because a counterclaim is appropriately brought by a defendant against a named plaintiff, I will consider that defendant Linne' Hansen intended to include the Plaintiff Unites States of America as a counterclaim defendant. However with the exception of the United States, the record does not show that any other named third-party defendant has been served with a copy of Linne' Hansen's claim against him. Of course, until they are properly served by the United States Marshal and thereby made parties to this suit, they are under no obligation to answer interrogotories or requests for admissions. Rule 33 and 36, Federal Rules of Civil Procedure.

A status conference was held in this case on November 29, 1983 before United States District Judge Barbara B. Crabb. Plaintiff appeared by Jeffrey M. Anderson, assistant United States Attorney. Defendants Alan A. Hansen and Linne' L. Hansen appeared in person. There were no appearances for any other defendants.

There are pending the motions of defendant Linne' L. Hansen to dismiss and to strike. 3/

- -

3/ I note that the motion to strike and the motion to dismiss have been filed by defendant Linne' L. Hansen only. As a non-lawyer, he is not permitted to represent other persons in a proceeding such as this. The motions which are signed only by him can be considered to have been filed on his behalf only. At the present time, the record reflects that Alan Hansen has not answered the complaint.

The parties are to observe the following briefing schedule on these motions: Plaintiff's brief in opposition to the motions is to be served and filed no later than December 9, 1983. Defendant Linne' L. Hansen's brief in reply is to be served and filed no later than December 28, 1983.

If plaintiff chooses to file a motion for summary judgment on its claim against defendants, it may have until January 31, 1984, in which to do so. Attached to this memorandum is a copy of the court's procedure for the filing of summary judgment motions. Mr. Anderson and the defendants are directed to follow procedures outlined in the attachment. Following the resolution of the

motion for summary judgment, a status conference will be held to determine what issues remain for resolution.

Entered this 29th day of November, 1983.

By the Court:
Barbara B. Crabb
District Judge.

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v.

ALAN A. HANSEN;
LAURA HANSEN; SUSAN HANSEN;
MILTON T. HANSEN; MILTON R.
HANSEN; and ALAN HANSEN, and
LINNE' HANSEN, as Trustee
for Larchwood Pure Trust;
STATE OF WISCONSIN (Depart-
ment of Revenue),

Defendants,

v.

UNITED STATES OF AMERICA,
WILLIAM FRENCH SMITH,
Attorney General of the United
States of America, JOHN R. BYRNES,
United States Attorney, JEFFREY W.
ANDERSON, Assistant U.S. Attorney,
and JEFFREY D. SNOW, Trial Attorney,

Third-Party Defendants.

ORDER

83-C-842-C

This case is before the court on the motions of Defendant Linne' Hansen to dismiss the complaint as to him for lack of jurisdiction and to strike plaintiffs reply to defendant Linne' Hansen's counterclaim. Also before the court is plaintiff's motion for summary judgment against defendants Linne' and Alan Hansen.

Defendant Linne' Hansen's Motion to Dismiss for Lack of Jurisdiction

Defendant Linne' Hansen has moved to dismiss this action on the grounds that the plaintiff has no civil jurisdiction over sovereign citizens and that the federal income tax is not a legal tax. Defendant is in error in contending that the United States cannot proceed against one of its own citizens in a legal

action to collect taxes. 26 U.S.C. ss 7401 and 7403 empower the Secretary of the Treasury to file civil actions to enforce liens of the United States and to collect taxes.

Defendant is in error also in his contention that the federal income tax is not a legal tax. The validity of the income tax has been upheld repeatedly against claims that it violates due process, the right against self-incrimination, United States v. Meng, 466 F. 2d 1000 (7th Cir. 1972); freedom of religion, Graves v. Commissioner of Internal Revenue, 579 F. 2d 392 (6th Cir. 1978); or that it subverts the fundamental philosophy of the United States Constitution. Acker v. Commissioner of

Internal Revenue, 258 F. 2d 568 (6th Cir. 1958), affr'd 361 U.S. 87. In this case, defendants attack seems to be premised on the contention that wages derived from labor do not constitute income but are "rather a simple quid pro quo, something for something," and that the income tax is actually an excise tax bind- binding only on those who recieve or exercise privilages.

Defendant's argument is without merit. 26 U.S.C. S. 61 taxes all "income from whatever source derived." Wages that are derived from one's own efforts constitute income derived from that source. See Brushaber v. Union Pacific Ry. Co., 240 U.S. 1 (1916)(upholding income tax statutes against the constitutional challenge that the taxes were invalid

excise taxes); Oldland v. Kurz, 528 F. Supp. 316 (D. Colo. 1981).

Defendant Linne' Hansen's Motion to Strike Reply to Counterclaim

There is no need to consider this motion, as it relates to a wholly irrelevant document, a reply to a counterclaim filed by persons who are not counterclaimants and have never been served. In any event, a review of the reply reveals nothing that could be construed as scurrilous or redundant, despite defendant's allegations. For example, the "Second Defense" reads in full: "The counterclaim fails to state a claim upon which relief can be granted." Although Linne' Hansen characterizes that statement as as scurrilous, it is clear that it is not.

Defendant Linne' Hansen's motion to strike will be denied.

Plaintiff's Motion for Summary Judgment

Plaintiff describes its motion as one for partial summary judgment concerning the tax liabilities of Linne' Hansen and Alan A. Hansen. Such a motion seems to be in order as to defendant Linne' Hansen; however, Alan A. Hansen has never filed an answer or any other responsive pleading in this case and is therefore in default. I will consider plaintiff's motion only as it applies to Linne Hansen, the only defendant who has filed pleadings in this case. (Plaintiff is free to move for default against Alan A. Hansen under the provisions of Rule 55, Federal Rules of Civil Procedure.)

For the purposes of deciding the motion for partial summary judgment, I find that there is no genuine dispute with regard to the following material facts:

FACTS

Plaintiff is the United States of America and the taxpayer-defendant is Linne' L. Hansen. On September 25 and November 20, 1978, Plaintiff's Internal Revenue Service made tax assessments against defendant Linne' L. Hansen for unpaid federal income taxes for the years 1974 and 1975 and those assessments, with accrued interest and penalties, totaled $10,878.91 with daily interest thereon after December 31, 1983, of $3.27 compounded.

Defendant Linne' Hansen did not decl-

clare to the Internal Revenue Service any income earned during the years 1974 and 1975.

OPINION

Defendant Linne' Hansen has not come foreward with any evidence to show that the assessment wamde against him by the Internal Revenue Service is incorrect. The burden is on him to make such a showing, as the assessment of the Internal Revenue Service carry with them a presumption of correctness. Welch v. Helvering, 290 U.S. 111. 115 (1933).

There is no requirement that a court hold a trial when there is no contested issue of fact at stake in the dispute. It is to relieve courts of such useless exercises that the summary judgment pro-

cedure exists. By filing a motion for whole or partial summary judgment, a party can find out whether his or her opponent has any evidence to support the claims of the complaint. If there is none, the court can decide the issue on the law, without wasting the parties and the court's time or subjecting jurors to an unneccessary inconvenience.

In this instance, since defendant Linne' Hansen has offered no evidence to rebut the presumption of correctness of the tax assessment against him, there is no factual matter in dispute and partial summary judgment in (sic) appropriate. 1/

ORDER

IT IS ORDERED that

- -

1) defendant Linne' Hansen's motion to dismiss the complaint is DENIED;

2) defendant Linne' Hansen's motion to strike the reply to his counterclaim is DENIED;

3) plaintiff's motion for partial summary judgment against defendant Alan A. Hansen is DENIED;

4) plaintiff's motion for partial summary judgement against defendant Linne' Hansen is GRANTED;

- -

1/ In his brief, defendant Linne' Hansen suggests that the statute of limitations has expired, barring this action. Since this defense has never been pleaded, but was raised for the first time in defendants brief, I need not consider it. I note however, that the statute of limitations would have begun to run only if defendant Linne' Hansen had filed a valid income tax return for the year in question and he has not alleged that he did so.

5) the parties may have until June 1, 1984 in which to undertake discovery in this matter; and

6) a status conference will be held on May 1, 1984, at 10;30 a.m., before the United States Magistrate, at which time a date can be set for trial or for filing a motion for summary judgment.

Entered this 27th day of February, 1984.

BY THE COURT:

BARBARA B. CRABB
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LINNE' L. HANSEN , et al.,

Defendant.

ORDER

83-C-842-C

The United States having filed a motion for an order authorizing service of process under Title 28, United States Code, Section 1655, and it appears to the Court that one aspect of this action is to enforce federal tax liens against certain real estate located within this Court's jurisdiction, and that two of the defendants cannot be served within Wisconsin, now therefore:

IT IS ORDERED that the defendants, Milton T. Hansen and Milton R. Hansen, shall appear in this cause and plead to the Complaint on or before the 30 day of May, 1984, and in default thereof, the Court will proceed to a hearing and adjudication of the foreclosure aspect of this cause in the same manner as if these two absent defendants had been served with process within the jurisdiction of this Court; and

IT IS FURTHER ORDERED that the United States Marshal shall cause a true and correct copy of this order, and of the complaint filed by the United States in this cause, to be personally served upon Milton T. Hansen and Milton R. Hansen at the addresses given in the Application

for Order Authorizing Service of these persons filed by the United States.

DONE AND ORDERED at Madison, Wisconsin, this 17th day of April, 1984.

Barbara B. Crabb

District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LINNE' L. HANSEN, et al.,

Defendant.

ORDER

83-C-842-C

Plaintiff having moved for a default judgment against the defendant, Alan A. Hansen, and supported it's motion by an affidavit of debt of the District Director, Internal Revenue Service, and no objection having been made by Alan Hansen, who has failed to file pleadings in this case, it is hereby

ORDERED that judgment by default is

granted in favor of the United States and against Alan A. Hansen in the sum of $10,873.85 as of December 31, 1983, with daily interest thereafter at $3.27 compound.

DONE AND ORDERED at Madison, Wisconsin this 17th day of April, 1984.

BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALAN A. HANSEN; LAURA HANSEN; SUSAN HANSEN; MILTON T. HANSEN; MILTON R. HANSEN; and ALAN HANSEN and LINNE' HANSEN as Trustee for Larchwood Pure Trust; STATE OF WISCONSIN (Department of Revenue),

Defendants,

and

LINNE' L. HANSEN,

Defendant and Third-Party Plaintiff,

v.

UNITED STATES OF AMERICA, WILLIAM FRENCH SMITH, Attorney General of the United States of America, JOHN R. BYRNES, United States Attorney, JEFFREY W. ANDERSON, United States Attorney, and JEFFREY D. SNOW, Trial Attorney,

Third-Party Defendants.

ORDER

83-C-842-C

A Status Conference was held in this case on July 13, 1984 at 8:45 a.m., before United States Magistrate James Groh, Jr. Assistant United States Attorney James Ratzel (in place of Jeffrey D. Snow, Tax Division, United States Department of Justice) appeared for plaintiff; and Alan Hansen and Linne' Hansen appeared pro se. There was no appearances for the other defendants.

A Status Conference was previously held in this case on May 1, 1984, for purposes, inter alia, of setting a date for trial and related pre-trial procedures. No one appeared on behalf of defendants/counter plaintiff. Due to unc-

ertainties as to the status of the parties in issue, the plaintiff was given leave to treat its reply to the counterclaim as a motion to dismiss, and a further Status Conference was scheduled for July 11, 1984. It having been represented that defendants Laura Hansen and Susan Hansen were minors, the plaintiff was requested to report at the Status Conference with regard to the nature of the claims against them, and with regard to the necessity or desirability of appointing guardians ad litem to represent their interests.

At the Status Conference on July 13, 1984, substitute counsel for plaintiff advised that he had been asked to appear for the plaintiff because the att-

orney to whom the case was assigned, Jeffrey D. Snow, of the Tax Division, United States Department of Justice, was engaged elsewhere. No explanation was offered why Mr. Snow did not or clould not have taken steps to inform the court of this conflict so that a timely rescheduling might have been arranged.

With regard to the subject of the appointment of a guardian ad litem, defendant Alan Hansen reported that Susan Hansen was his wife and not a minor, and that he would object to the appointment of a guardian ad litem to represent the interests of his daughter Laura Hansen, a minor. Counsel for the plaintiff stated that he had been advised that it was the position of the United States

that it was unnecessary to appoint a guardian ad litem to represent the interests of Laura Hansen, but counsel was not familiar with the nature of the claim against the minor or the reason or authority underlying the government's position. Counsel for plaintiff was likewise uncertain about the nature and status of the claims remaining in the case.

The day before the Status Conference, defendants Linne' and Alan Hansen filed an Affidavit protesting the failure of the plaintiff to object or respond to certain discovery served upon it on or about March 12, 1984. A copy of the affidavit was furnished counsel for the plaintiff at the Status Conference.

As discussed and determined at the conference,

IT IS ORDERED THAT:

1. With regard to the appointment of a guardian ad litem, plaintiff shall, on or before August 1, 1984, file a memorandum of law in support of its position that no guardian ad litem is required to be appointed to represent the interests of Laura Hansen, a minor. Defendant shall have ten days from the reciept of the government's memorandum in which to file a responsive memorandum.

2. With regard to defendant's discovery requests (which were filed with this court on March 30, 1984) the court will treat defendant's affidavit of July 11, 1984 as a motion to compel discovery under Rule 37. The plaintiff shall have

until July 23, 1984, in which to file its memorandum in opposition, and supporting materials, if any. Defendants shall have ten days from the reciept of the plaintiff's submission in which to file a responsive memorandum.

3. A further status conference shall be held herein at a date and time to be established by the court. The Plaintiff shall be represented at the status conference by the attorney who will try the case. The parties shall be fully prepared to discuss the status of the remaining parties and issues in the case in detail.

Entered this 18th day of July, 1984.

James Groh, Jr.

United States Magistrate

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALAN A. HANSEN; LINNIE L. HANSEN; LAURA HANSEN; SUSAN HANSEN; MILTON T. HANSEN; MILTON R. HANSEN; and ALAN HANSEN and LINNIE HANSEN, as Trustees for the Larchwood Pure Trust; and LARCHWOOD PURE TRUST; STATE OF WISCONSIN (Department of Revenue),

Defendants.

ORDER

83-C-842-C

Based on the declaration of Jeffrey D. Snow, Trial Attorney, Tax Division, United States Department of Justice, Washington, D.C. dated July 31, 1984, and the representations of the assistant U.S. Attorney, Jeffrey M. Anderson, and it appearing that the defendants,

Milton T. Hansen and Milton R. Hansen having failed to appear, plead or otherwise defend:

IT IS HEREBY ORDERED THAT DEFENDANTS MILTON T. HANSEN AND MILTON R. HANSEN ARE DEEMED TO BE IN DEFAULT AND THAT ANY CLAIMS THEY MIGHT HAVE AS TO INTERESTS IN PROPERTY OUTLINED IN PARAGRAPS (sic) 9 and 11 OF THE COMPLAINT SHALL BE DEEMED FORFEITED.

Dated this the 7th day of November, 1984.

BARBARA B. CRABB

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAURA HANSEN; SUSAN HANSEN; ALAN A. HANSEN; AND LINNE HANSEN, as Trustees of the Larchwood Pure Trust.

Defendants,

and

LINNE L. HANSEN,

Counterclaimant,

v.

UNITED STATES OF AMERICA and UNITED STATES JUSTICE DEPARTMENT,

Counterclaim Defendants.

ORDER

83-C-842-C

This case is before the court on the motion of defendants Alan A. Hansen and

Linne Hansen to vacate the order entered February 27, 1984, the motion of the plaintiff to dismiss the counterclaim against its attorneys, the motion for the plaintiff for summary judgment and the motion of defendants Alan A. Hansen and Linne L. Hansen to compel discovery.

The motion to vacate the February 27, 1984 order will be denied, The moving defendants have offered no reason for vacation of the order, but merely reargued issues of law. These arguments do not require any change in the February order.

In support of its motion to dismiss the counterclaim against its attorneys plaintiff contends that none of the individuals named in the counterclaim has been served with process and that the

counterclaim is nothing more than an attempt to intimidate the persons named in the counterclaim. In response, defendant Alan A. Hansen and Linne L. Hansen point out that in November, 1983 they filed an amended answer and counterclaim in which they withdrew their claims against the individuals named earlier. It appears from defendant's representation and from the amended answer and counterclaim that this motion of the plaintiff is now moot.

I turn next to plaintiff's motion for summary judgment. This motion is inaccompanied by proposed findings of fact, as required in this court (a requirement of which plaintiff is well aware, having filed proposed findings of fact in support of its earlier motion for partial

summary judgment). To support the motion, plaintiff has filed exhibits which are not certified or otherwise authenticated and do not appear to meet the requirements of Rule 56(e), Federal Rules of Civil Procedure.

Because plaintiff has failed to demonstrate that it is entitled to summary judgment in its favor, its motion will be denied and this matter will be set for trial Monday, December 3, 1984, at 9:00 a.m.

The only defendants remaining in this case are Laura Hansen, Susan Hansen, Alan Hansen and Linne' Hansen as Trustee for Larchwood Pure Trust, and the State of Wisconsin. Judgment has been entered against Milton T. Hansen, Milton R. Hansen, and Alan A Hansen and Linne L. Han-

sen as individuals. From a document submitted by Linne L. Hansen, it appears that Laura Hansen is a minor. At the direction of the magistrate, plaintiff briefed the question whether Laura Hansen's status as a minor required the appointment of a guardian ad litem to protect her interests.

Plaintiff contends that Laura Hansen's interest in the lawsuit stands or falls on the question of the legal validity of the Larchwood Pure Trust and that she will not be prejudiced by a lack of legal representation. From my review of the action, it appears that plaintiff is correct in its contention and that at this time there is no need to appoint a guardian ad litem for defendant Laura

Hansen over the objections of the other defendants.

There remains a substantial question whether Alan A. Hansen and Linne L. Hansen can represent themselves in their capacity as fiduciaries. Neither Alan A. Hansen nor Linne L. Hansen holds himself out as a lawyer and there is no reason to believe either of them is a lawyer. As lay persons they can represent themselves as individuals, but as fiduciaries they have a duty to the trust and to its beneficiaries which is not discharged by lay representation in court. Cf. Strong Delivery Ministry Association v. Board of Appeals of Cook County, 543 F. Ad 32 (7th Cir. 1973).

In this case however, the question of

the need for representation by a member of the bar of this court blurs with the question of the legal validity of the trust that is the subject of the action brought by the United States. The final determination of the need for legal representation of the trust's fiduciaries cannot be made until there is a determination of the legality of the trust. If the trust is a legally-constituted entity, its fiduciaries cannot proceed in court except with counsel. However, if it is a sham, as the plaintiff contends, the question of representation is moot.

Although it would tend to bolster the appearance of the trust's legitimacy if the fiduciaries were represented by counsel, I will permit the fiduciaries to

represent themselves if they insist on doing so, until there has been a final determination of the trust's validity.

Linne L. Hansen and Alan A. Hansen requested a trial by jury. Although they are no longer defendants in this action and none of the other defendants has made a similar request, Linne' L. Hansen remains in the action as a co-unterclaimant. As to the counterclaims, the issue raised therein will be tried to a jury. Plaintiff's case will be tried to the court, since it is now only an action in equity, requiring a judicial determination of the validity of the larchwood Pure Trust.

Finally I turn to the motion to compel discovery.

On March 9, 1984, Alan A. Hansen and

Linne L. Hansen served Jeffrey D. Snow interrogotories and requests for admission "directed to plaintiff's attorney." Jeffrey D. Snow did not respond to this discovery request and did not object to it until long after the expiration of the thirty day period provided under the Rules 33 and 36, Federal Rules of Civil Procedure.

As plaintiff points out, Snow is not a party to this action and therefore was not properly served with interrogotories and requests for admission. Moreover, at the time the discovery request was made, Alan A. Hansen had never made an appearance or joined issue, making it unlikely that his discovery request would have been valid even if served upon a party.

Additionally the requests are clearly irrelevant to the issues in dispute in this case. Rather than being calculated to lead to the discovery of relevant information, they appear to be designed to harass and intimidate plaintiff's counsel. 1/

I conclude that plaintiff's objection to the discovery request is meritous.

ORDER

In summary, IT IS ORDERED that

1) the motion of Alan A. Hansen and Linne L. Hansen to vacate the order entered herein on February 27, 1984, is DENIED;

- -

1/ For example, in the discovery requests, Alan A. Hansen and Linne L. Hansen advise Snow, "Refusal to supply (Freedom of Information Act) documents is a felony, on your part."

2) the plaintiff's motion to dismiss the counterclaim against its attorneys is DENIED as moot;

3) the plaintiff's motion for summary judgment is DENIED;

4) the motion of Alan A. Hansen and counterclaim plaintiff Linne L. Hansen to compel discovery is DENIED; and

5) this case is set for trial on Monday, December 3, 1984, at 9:00 a.m. in the United States District Court at 215 Monona Avenue, Madison, Wisconsin. A jury of six persons will be impanelled to hear Linne L. Hansen's counterclaim against plaintiff.

The parties are to file and serve proposed voir dire questions and instructions in writing no later than Monday, November 26, 1984. If no proposed voir

dire questions are filed, those in the attached standard form will be the only ones used.

Entered this 13th day of November, 1984.

BY THE COURT:

BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAURA HANSEN; SUSAN HANSEN; ALAN A. HANSEN; and LINNE HANSEN, as trustees of the LARCHWOOD PURE TRUST,

Defendants,

and LINNE L. HANSEN,

Counterclaimant

vs.

UNITED STATES OF AMERICA and UNITED STATES JUSTICE DEPARTMENT,

Counterclaim Defendants.

COURT'S FINDING OF FACTS

83-C-842-C

I find as fact that on September 28, 1967, Laura and Milton Hansen conveyed certain property to Alan Aurthur Hansen

and Linne Hansen; that property is described in plaintiff's Exhibit 1, and was transferred in fee simple to Alan Hansen and Linne' Hansen. I find that prior to the tax year 1974 that Linne Hansen submitted income tax returns on a yearly basis as required under the income tax laws. That on April 14, 1975 Linne Hansen and Alan Hansen submitted statements to the Internal Revenue Service on form 1040's which do not constitute legal tax returns under the law. Those statements merely raise the Fifth Amendment in response to every line in which taxable income or information about taxable income is required to be submitted. I find that on May 17, 1975, Linne Hansen and Alan Hansen set up something called the Larchwood Pure

Trust which they did on the advice of William E. Drexler, William Drexler, and acted as notary public for the trust and persons named. Joyce Drexler, Bruce Drexler acted as trustees of the trust for two days after which they were replaced by Linne Hansen and Alan Hansen. Linne Hansen quit claimed a parcel of real property to the trust and claimed it as a tax exempt transaction retaining a life tennancy in the parcel. Alan Hansen quit claimed a parcel of real property to the trust as well, but did not at the time retain a life tennancy. Later the trust was modified to permit Alan Hansen to have a life tennancy in in that property.

On March 15, 1977, Laura Marian (sic)

Hansen, the mother of the defendants Alan and Linne Hansen, conveyed another parcel to the Larchwood Pure Trust. It's absolutely clear that this document called Constitutional Trust, purporting to set up the Larchwood Pure Trust does not operate to set up a trust legal under the federal income tax laws. It is a mockery of any trust and I will say pointedly to the Hansens that Mr. Drexler cheated you out of $250 if he charged you that for preparation of this trust because this trust is a sham. It does nothing but earn money for Mr. Drexler and cause trouble for anyone who is gullible enough to buy the trust and rely upon this trust document. Unser the trust, the trustees have total power and no liability. There is no

separation of title from beneficial enjoyment, no fiduciary relationship between the supposed trustees and the supposed beneficiaries. There is no attempt in the document to run the trust as a separate legal entity and that is shown by the way, in fact, it was run in this case. There has been no income tax return filed on behalf of the Larchwood Pure Trust since its inception as a trust; there has never been separate fiduciaries, separate from the beneficiaries. It is clear in this case, here today, that fiduciaries did not engage legal counsel; as I told Linne Hansen and Alan Hansen their failure to hire counsel simply adds to the government's claim that they are not true fiduciaries.

The informal transfers of beneficial units from Milton T. and Milton R. back to the trust and back out again to other purported beneficiaries demonstrates that this trust has none of the fiducia that a trust is required to have in order to be valid under the law. The mere fact that the trust includes the right to disolve it at any time in and of itself -- if there were nothing else in the trust document that made it a sham -- that in and of itself would show that it is not a valid trust.

I do find that this trust did not act to convey any property lawfully away from Linne Hansen and Alan Hansen, that they remain the real owners of the property that they attempted to convey to

an illegal entity and that there is no legal validity whatsoever to the Larchwood Pure Trust.

I CERTIFY THAT THE FOREGOING
IS A CORRECT TRANSCRIPT FROM
THE RECORD OF PROCEEDINGS IN
THE ABOVE-ENTITLED MATTER.

BARBARA LAZARIS
OFFICIAL COURT REPORTER

12-4-84
DATE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LINNE' L. HANSEN ALAN A. HANSEN, et al.,

Defendants.

DECREE OF FORECLOSURE

83-C-842-C

This action having come on for trial before the Court on December 3,1984, the issues having been duly tried, and judgments having been entered in favor of the United States on February 27, 1984, and against Linne L. Hansen for unpaid federal income taxes for the years 1974 and 1975 in the sum of $10,878.91 plus statutory interest after December 31,

1983, and on April 17, 1984 against Alan A. Hansen for unpaid federal income taxes for the years 1974 and 1975 in the sum of $10,873.85 plus statutory interest after December 31, 1983; and it having been determined that the tax liens of the United States against the parcels of real property described at Paragraphs 9 and 11 of the complaint, it is hereby ORDERED:

1. That, subject to easements of record, the said federal tax liens of the United States encumber the below-described parcels of real property, located in Taylor County, in which title is in the name of Larchwood Pure Trust, a "sham" trust with the true owners of the property being Linne' L. Hansen and Alan A. Hansen, equally:

The North half of the Northeast Quarter of Section Twenty-six, Town Thirty-two North, Range Two East.

The Southeast Quarter of the Northeast Quarter of Section Twenty-six, Town Thirty-two North, Range Two East; EXCEPT a parcel of land described as follows: Beginning at the Northeast corner of said forty; thence West on the forty line 30 rods; thence South parallel with the East forty line 30 rods; thence East parallel to the North forty line 30 rods; thence North along the East forty line 30 rods to the place of beginning; RESERVING to John Anderson, Emil Anderson, and Ed Anderson a life estate in the house and two acres surrounding the house on the part of the Southwest Quarter of the Northeast Quarter, Section Twenty-six, Town Thirty-two North, Range Two East.

The Northeast Quarter of the Southeast Quarter of Section Twenty-six, Town Thirty-two North, Range Two East.

The South half of the Southeast Quarter of Section Twenty-

three, Town Thirty-two North, Range Two East.

2. That the said federal tax liens are hereby foreclosed against parcels of real property described at paragraph 1 and that said parcels in their entirety are ordered sold;

3. That the United States Marshal for the Western District of Wisconsin, or his representative, is hereby authorized under Title 28, United States Code, Sections 2001 and 2002, to offer for sale at public auction the parcels of real property described at Paragraph 1, with all improvements, buildings and appurtenances thereunto pertaining;

4. That the public auction referred to in paragraph 3 shall be held either on the premises themselves or any other

place in accordance with the provisions of Title 28, United States Code, Section 2001, the time thereunder to be announced by the United States Marshal, after being advertised once each week for four consecutive weeks preceeding the date fixed for the sale in a daily newspaper of general circulation in Taylor County, Wisconsin, or by any other notice that the United States Marshal or his representative in his discretion may deem appropriate;

5. That the said parcels of real property shall be sold free and clear of all liens or other claims by any party to this proceeding, with any unpaid real estate taxes to be paid as a first lien from the proceeds of the

sale, prorated to the actual day of sale;

6. That a minimum bid of $30,000 is set on the parcels of real property. If that minimum bid is not met, the United States, under the conditions set forth in Paragraphs 4 and 5, may arrange for a new public sale with appropriate alteration in the minimum bid;

7. That the purchaser shall be required to deposit with the United States Marshal a minimum of ten percent of the amount of his bid by certified check or cash deposit at the time of sale;

8. That the balance of the purchase price for the said parcels of real property shall be tendered to the United States Marshal by the successful bidder

within 30 days following the date of sale in the form of a certified check payable to the United States Marshal for the Western District of Wisconsin. In the event that the purchaser fails to fulfill this requirement, the deposit shall be forfeited and applied to the expenses of sale, and the said improved real property shall be re-offered for sale in accordance with the provisions of Paragraph 6;

9. That pending the sale of the parcels of real property, the United States Marshal is authorized to have free access to the premises and to take all actions necessary to preserve said property until the deed therefor is delivered to the successful purchaser of said property;

10. That the sale of the said parcels of real property shall be subject to confirmation by this Court, and upon confirmation the United States Marshal shall execute and deliver his deed, conveying the property to the successful purchaser;

11. That when the sale is confirmed by this Court, the County Treasurer, Taylor County, shall cause a transfer of the subject property to be reflected upon that County's Register of Titles;

12. That after confirmation of the sale, the United States Marshal shall, first, pay the expenses of the sale as set forth in Paragraph 5, and shall secondly, pay the remaining sum up to $21,752.76, plud statutory interest thereon after December 31, 1984, to the

United States, with any monies remaining being paid, equally, to Linne' L. Hansen and Alan A. Hansen.

Entered this 21st day of December, 1984.

BARBARA B. CRABB

Chief Judge

This Order drawn by:

Jeffrey D. Snow
Trial Attorney, Tax Division
United States Department of Justice
Washington, D.C. 20530
Telephone: (202) 724-6548

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAURA HANSEN; SUSAN HANSEN; ALAN A. HANSEN; AND LINNE' HANSEN, as trustees of the Larchwood Pure Trust,

Defendants,

and

LINNE' L. HANSEN,

Counterclaimant,

v.

UNITED STATES OF AMERICA and UNITED STATES JUSTICE DEPARTMENT,

Counterclaim Defendants.

ENTRY OF DEFAULT

83-C-842-C

It appearing from the record herein that the United States of America has

failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure to the counterclaims filed January 12, 1984, by Defendants Susan G. Hansen and Laura J. Hansen, the default of the United States of America is HEREBY ENTERED as to those counterclaims pursuant to Federal Rules of Civil Procedure Rule 55(a).

Entered this 5th day of December, 1984.

JOSEPH SKUPNIEWITZ
Clerk of Court

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAURA HANSEN, SUSAN HANSEN, ALAN A. HANSEN, and LINNE' L. HANSEN, as trustees of the Larchwood Pure Trust,

Defendants.

ORDER

83-C-842-C

This civil case is before the court on Plaintiff's motion to strike the entry of default against it in favor of defendants Susan G. Hansen and Laura J. Hansen (hereafter defendants).

In support of its motion, plaintiff alleges that it did file a response to the counterclaims, albeit an untimely one. Further, Plaintiff contends that

the counterclaims fail to state claims against plaintiff on which relief may be granted and that the court lacks jurisdiction to entertain the counterclaims.

In the counterclaims, defendants charge that plaintiff and its agent, revenue officer Jeffrey R. Henry, have attempted to work a corruption on defendants by filing of tax liens and that the tax liens constitute a criminal slander of title. Also, defendants charge that plaintiff has worked a conspiracy against their rights in violation of 18 U.S. C. ss. 241 and 242, and has attempted to involve this court in the conspiracy. They seek a grand jury investigation, damages, and removal of all liens against the property of the Larchwood Pure Trust.

As plaintiff contends, these counterclaims do not state any claims against plaintiff on which relief can be granted in this lawsuit. Defendant's allegations are merely conclusory charges without any supporting allegations of fact. Moreover, this court lacks the authority to hear a claim by a taxpayer for recovery of taxes erroneously assessed unless the taxes have been paid and a claim for a refund has been made.

Although plaintiff's response to the counterclaims was untimely, that fact alone does not support the granting of a default judgment against plaintiff when plaintiff has demonstrated its intention to defend against the counterclaims. In any event, I could not enter judgment in favor of defendants unless

they were able to establish their right to relief. Since their counterclaims state no claim cognizable in this Court, they cannot establish their right to relief.

ORDER

Plaintiff's motion to strike the December 5, 1984 entry of default judgement against plaintiff on behalf of the defendants Laura J. Hansen and Susan G. Hansen is GRANTED, as is plaintiff's motion to dismiss the counterclaims of defendants Laura J. Hansen and Susan G. Hansen.

The Clerk of Court is directed to enter final judgement for plaintiff on the entire case.

Entered this 21st day of January, 1985.

BY THE COURT:

BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LINNE' L. HANSEN; ALAN A. HANSEN, et al.,

Defendants.

NOTICE OF FORECLOSURE SALE

83-C-842-C

PLEASE TAKE NOTICE, that by virtue of a judgment of foreclosure, and sale entered in the action on December 21, 1984, the undersigned United States Marshal for the Western District of Wisconsin will sell at public auction on the front steps of the County Courthouse in the City of Medford, Taylor County, Wisconsin, on November 20, 1985, at 2:00

p.m. (or if the Marshal is unavoidably detained, the sale will be held immediately upon his arrival) the real estate and mortgaged premises directed by said judgment to be sold, described below:

The North half of the Northeast Quarter of Section Twenty-six, Town Thirty-two North, Range Two East.

The Southeast Quarter of the Northeast Quarter of Section Twenty-six, Town Thirty two North, Range Two East; EXCEPT a parcel of land described as follows: Beginning at the Northeast corner of said forty; thence West on the forty line 30 rods: thence South parallel with the East forty line 30 rods; thence East parallel to the North forty line 30 rods; thence North along the East forty line 30 rods to the place of beginning; RESERVING to John Anderson, Emil Anderson and Ed Anderson a life estate in the house and two acres surrounding that house on the part of the Southeast Quarter of the Northeast Quarter, Section Twenty-six, Town Thirty-two North, Range Two East.

The Northeast Quarter of the Southeast Quarter of Section Twenty-six, Town Thirty-two North, Range Two East.

The South half of the Southeast Quarter of Section Twenty-three, Town Thirty-two North Range Two East. (Hansen property located on Route 2, Medford.)

TERMS OF SALE: Cash with a bid no less than $30,000. That the successful bidder pay not less than ten percent of the purchase price as down payment, and the balance to be paid to the United States Marshal, Western District of Wisconsin. Upon confirmation of sale the purchaser shall recieve a deed thereof, subject to the express conditions that the property is sold subject to existing real estate tax liens; that the successful bid price must be paid to the United States Marshal, Western District of

Wisconsin, within ten days of the date of the entry of the order confirming sale (which is to be no earlier than 30 days from the time the down payment is made) or the sale will be disapproved, and the earnest money forfited (sic); and that there are no warranties of title.

Dated this 4th day of September, 1985.

PETE HALL

Chief Deputy, United States Marshal
Western District of Wisconsin

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

November 5, 1985

Before

Hon. RICHARD A. POSNER, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

Hon. JOEL M. FLAUM, Circuit Judge

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

No. 85-1039

LINNE' L. HANSEN, et al.,

Defendants-Appellants.

Appeal from the United States
District Court for the
Western District of Wisconsin

NO. 83 C 842

Judge Barbara B. Crabb

This matter comes before the court for its consideration of the following documents:

1. "MOTION FOR INJUNCTION FOR A STAY OF EXECUTION" filed herein on October 18, 1985, by pro se appellants.

2. "OPPOSITION TO MOTION FOR STAY OF EXECUTION" filed herein on October 25, 1985, by counsel for the appellee.

On consideration thereof,

IT IS ORDERED that the MOTION FOR INJUNCTION FOR A STAY OF EXECUTION is DENIED as moot.

JUDGMENT - WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

July 3, 1986

Before

Hon. WALTER J. CUMMINGS, Chief Judge

Hon. HARLINGTON WOOD, JR. Circuit Judge

Hon. RICHARD A. POSNER, Circuit Judge

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NO. 85-1039

LINNE' L. HANSEN, et al.,

Defendants-Appellants.

Appeal from the United States
District Court for the
Western District of Wisconsin

No. 83-C-842
Barbara B. Crabb, Judge.

This cause came before the Court for decision on the record from the United States District Court for the Western District of Wisconsin, Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the appeal is hereby, DISMISSED, with costs, in accordance with the opinion of this Court filed this date.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No 85-1039

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALAN A. HANSEN, et al.,

Defendant-Appellants.

Appeal from the United States
District Court for the
Western District of Wisconsin

No. 83 C 842 - Barbara J. Crabb, Judge

SUBMITTED MAY 13, 1986

DECIDED JULY 3, 1986

Before CUMMINGS, Chief Judge, and

WOOD and POSNER, Circuit Judges.

POSNER, Circuit Judge. Section 7403(a) of the Internal Revenue Code authorizes the federal government to bring suit to enforce its tax liens; and if the government prevails on the merits, the court "may decree a sale of such property (i. e., the property against which the lien was filed) by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States." 26 U.S.C. S. 7403(c). The government brought such an action here, the district court entered a decree of sale, and the defendants have attempted to appeal from that decree. Although no party has raised an issue concerning

our appellate jurisdiction, we must always satisfy ourselves that we have jurisdiction before we can decide the merits of an appeal.

The problem of appealability comes from the pendancy in the district court of counterclaims filed by two of the defendants against the government. The counterclaims were filed back in January 1984, and, perhaps because of their apparent frivolousness (among other things they charge the Internal Revenue Service and one of its agents with attempting to work a "corruption of blood" against the defendants by filing tax liens), the government never bothered to answer or otherwise defend against them. On December 5, 1984, after the trial of the

government's claim, the clerk of the district court entered a notation of default against the government on the counterclaims. See Fed. R. Civ. P. 55(a). This prompted the government to move at long last to dismiss the counterclaims, but it did not move to set aside the entry of default as such until after the district court entered the decree of sale on December 21, 1984. Without waiting for the court to grant the government's motions, enter a default judgment, or otherwise rule on the counterclaims, the defendants filed their notice of appeal to this court on January 2, 1985. On January 21 the district court odered the counterclaims dismissed. Final judgment in favor of the government on the entire case was entered

on January 24. The defendants did not file another notice of appeal. The district judge had not attempted to make his December 21 order of sale a final judgment appealable under Fed. R. Civ. P. 54(b).

Normally the only decisions that can be appealed to this court are final decisions. 28 U.S.C. S. 1291. The paradigmatic final decision is one that winds up the whole litigation in the district court. If an order of default were a final judgment on the claim defaulted on, then since in this case that order (noting that the government had defaulted on the defendant's counterclaims) was entered before the decree of sale, the decree would have been the last act

in the litigation (nothing would have remained pending in the district court) and hence would have been an appealable final judgment. But an order of default is not a final judgment, though a default judgment is. DIMMIT & OWENS FINANCIAL, INC. V. UNITED STATES, 787 F. 2d 1186, 1189-90 (7th Cir. 1986). The present case illustrates the reason for the distinction. The default order was an intermediate, ministerial, nonjudicial, virtually meaningless docket entry which was shortly undone by the district judge's order striking it and entering judgment for the government.

The defendants filed their only notice of appeal before the entry of the final judgment. Can we nevertheless give effect to the premature notice?

The cases are split. The majority, including our decision in STEVENS V. TURNER, 222 F. 2d 352 (7th Cir. 1955) say "no"; see also UNITED STATES V. TAYLOR, 632 F. 2d 530, 531 (5th Cir. 1980)(per curiam); GENERAL TELEVISION, INC. V. SOUTHERN RY., 725 F. 2d 1327, 1330-31 (11th Cir. 1984), and CROSS V. UNITED STATES POSTAL SERVICE, 733 F. 2d 1327, 1328 n. 1 (8th Cir. 1984)(dictum). But SANDIDGE V. SALEN OFFSHORE DRILLING CO., 764 F. 2d 252, 255 (5th Cir. 1985)(per curiam), and CAPE MAY GREENE, INC. V. WARREN, 698 F. 2d 179, 185 (3rd Cir. 1983) say "yes". The majority position rests on Fed. R. App. P. 4(a)(2), which provides that "a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or ord-

er shall be treated as filed after such entry and on the day thereof." A notice of appeal filed (as in this case) before the announcement of judgment does not satisfy the condition in Rule 4 (a)(2) for postponing the notice's effective date. The minority position rests on Rule 4(a)(4), which provides that "(a) notice of appeal filed before the disposition of any of the above motions shall have no effect," referring to motions under Fed. R. Civ. P. 50(b), 52(b), or 59. The court's adhering to this position reason that where (as also in this case) no such motion was filed, a premature notice can be given no effect.

We think the majority view is the be-

tter one,and thus adhere to STEVENS V. TURNER. (We acknowledge having resolved a similar but distinct issue, involving the effect of a premature petition to review administrative decisions, in favor of giving effect to the petition. See NORTH AMERICAN TELECOMMUNICATIONS ASS'N V. FCC, 773 F. 2d 375 (D.C. Cir. 1985). Rule 4 (a)(2) defines the circumstances in which a premature notice of appeal can be effective, and the circumstances of this case are not among them. To disregard the limitations in the rule would be to rewrite it rather too boldly for our tastes. The reference to prematurity in Rule 4(a)(4) has no negative implications. The reference is necessary to take care of the case where no subsequ-

ent judgment is entered-where all that happens is that a motion to alter the judgment is denied-so that one might have thought the original notice of appeal would still be good, nothing having happened to alter the judgment from which it was taken. Rule 4(a)(4) makes clear that the original notice of appeal has lapsed and a new one must be filed. The present case is not one to which Rule 4(a)(4) is addressed; in this case, the notice of appeal was filed before final judgment was either announced or entered, and there could be no reason to think the notice would do service for an appeal from the final judgment. The taxpayers, anticipating defeat, might as well have filed the notice of appeal simultaneously with the filing

of their counterclaims or their answer to the government's complaint. If their notice of appeal was not premature, no notice of appeal is premature.

Cases such as LAC COURTE OREILLES BAND V. WISCONSIN, 760 F. 2d 177, 180-81 (7th Cir. 1985), which uphold jurisdiction of appeals from nonfinal orders even when the notice of appeal was filed before the judge made the finding (of no just cause for delay) necessary to enable such an order to be appealed under Fed. R. Civ. P. 54(b), are distinguishable. The notice of appeal in such a case is timely; all that is missing is a finding necessary to make the order appealed from appealable. There is no suggestion in this case that the decree of sale could be made appeal-

able under Rule 54(b); the factual overlap between the decree and the defendant's counterclaims would prevent using Rule 54(b) to allow the decree to be appealed from before the counterclaims were disposed of. See JACK WALTERS & SONS CORP. V. MORTON BUILDING, INC. 737 F. 2d 698, 702-03 (7th Cir. 1984). Moreover, the defendants do not challenge just the decree; they also challenge the dismissal of their counterclaims, and the dismissal came later. Hence the issue is whether the defendants can appeal from a subsequent final judgment, without having filed a notice of appeal from that judgment, merely because they filed an earlier notice of appeal from a nonfinal, nonappealable order. We think not.

This appeal could be saved only if the decree of sale were an interlocutory order granting an injunction; such orders are appealable even though nonfinal. 28 U.S.C. S. 1292 (a)(1). It does not matter that the injunction is a permanent rather than temporary injunction; a permanent injunction, granted by interlocutory order (as where damage issues are retained for subsequent determination), is appealable immediately. DONOVAN V. ROBBINS, 752 F. 2d 1170, 1172 (7th Cir. 1985).

A decree foreclosing a mortgage or other conventional lien is equitable, but it is not an injunction in the conventional sense. Not every equitable order is an injunction for purposes of

section 1292(a)(1); a stay of an equity suit, for example, is not, see e.g. MEDTRONIC, INC. V. INTERMEDICS, INC. 725 F. 2d 440, 442 (7th Cir. 1984). An order directing the sheriff to execute a money judgment, a classic legal remedy, is neither equitable nor an injunction. Section 7403 of the Internal Revenue Code establishes a statutory procedure that could equally be described as foreclosure or as summary execution but that in either event does not create what we are minded to describe as an injunctive remedy-bearing in mind the desirability of limiting the occasions on which parties can take interlocutory appeals, in order to spare us from a flood of such appeals. Cf. GARDNER V. WESTINGHOUSE BROADCAST-

ING CO., 437 U.S. 478, 480 (1978). Orders of replevin and attachment are not appealable under 28 U.S.C. S. 1292 (a)(1). See, e.g. ROSENFELDT V. COMPREHENSIVE ACCOUNTING SERVICE CORP., 514 F. 2d 607, 609-10 (7th Cir. 1975); IN re FEIT & DREXLER, INC., 760 F. 2d 406, 412 (2d Cir. 1985)(dictum) 16 Wright & Miller, Cooper & Gressman S. 3922 at p. 43 (1977); cf. WEST V. ZURHORST, 425 F. 2d 919 (2nd Cir. 1970)(Friendly, J.). No more is the order in this case. There is no suggestion that the defendants would have experienced hardship-as from immediate execution of the decree of sale, or whatever-if they had waited till the counterclaims were disposed of before appealing. And they could have sought a stay of the decree of sale if

the government had been pressing to conduct the sale immediately.

The appeal is not within our jurisdiction and is therefore DISMISSED.

A True Copy:

Teste :

(unsigned)

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

July 23, 1986

Before

Hon. WALTER J. CUMMINGS, Chief Judge

Hon. HARLINGTON WOOD, JR., Circuit Judge

Hon. RICHARD A. POSNER, Circuit Judge

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

No. 85-1039

ALAN A. HANSEN, et al.,

Defendant-Appellants.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 83 C 842

Barbara J. Crabb, Judge

ORDER

On July 14, 1986, defendants-appellants filed a petition for rehearing. All the judges on the original panel have voted to deny the petition. The petition is therefore DENIED.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LINNE' L. HANSEN, et al.,

Defendants.

No. 83-C-842-C

ORDER

Defendants have moved for relief from judgment pursuant to Rule 60, Federal Rules of Civil Procedure.

Because this case is on appeal and the mandate has not been returned to this court, I lack jurisdiction to consider defendant's motion. However, even if jurisdiction were present, the motion would fail. Defendants have set forth two grounds on which they believe they are

entitled to relief from judgment. They contend first that under 26 U.S.C. S. 6020(b)(1), the secretary of the treasury is required to make a return in any case in which a citizen fails to make a return. Defendants argue that because no such return was ever made and presented to them, the statute was violated and the government could not proceed against them. Clearly this is not a "new matter" that would justify granting defendants relief from judgment, but even if it were, it does not provide a defense to the claims brought by the government. Thus, even if defendants had raised the statute at the defense of the case, the defense would have failed.

Defendants second contention is that the government may not force a citizen

into any form of worship or punish a citizen for holding a religious belief. They argue that because the IRS uses a religious symbol in violation of the establishment clause of the First Amendment, the government cannot punish them for violations of the Internal Revenue Service laws. Of course, this argument is absurd. Defendants belief that the federal government uses a 666 algorithm in conjunction with a social security number is not proof that the government is supporting a religion in violation of the establishment clause.

Defendant's motion for relief from judgment is DENIED for lack of jurisdiction.

Entered this 29th day of July, 1986.

BY THE COURT:

Barbara B. Crabb
District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LINNE' L. HANSEN, et al.,

Defendants.

No. 83-C-842-C

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Linne' L. Hansen, Laura J. Hansen and Susan G. Hansen, Defendants above named, hereby appeals to the Supreme Court of the United States from the final order of this Court which refused to vacate the judgment and to dismiss this action, and which is dated the 29th of July, A.D. 1986.

The jurisdiction of this appeal is provided by 28 U.S.C. sections 1252 and 1253.

Dated this 26th day of August, 1986

LINNE' L. HANSEN

Pro Se

ALAN A. HANSEN
Laura J. Hansen
by her corporal
father and Next
Friend, Alan A.
Hansen

SUSAN G. HANSEN

Pro Se

W 2856 Tower
Medford, WI 54451
715/ 427-3240

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of this NOTICE OF APPEAL was on this date mailed, postage prepaid, to the following parties:

Solicitor General of the United States
Department of Justice
Washington, D.C. 20044

Attorney General of the United States
Department of Justice
Washington, D.C. 20044

John Byrnes
U.S. Attorney
Western District of Wisconsin
120 N. Henry Street
Madison, WI 53701

Dated this 26th day of August, 1986.

LINNE' L. HANSEN

Pro Se

NATIONAL SECURITY AGENCY

CENTRAL SECURITY SERVICE

FORT GEORGE MEADE, MARYLAND 20755-6000

Serial: N9481C

10 Jan 1985

Mr. Linne' Hansen
W 2856 Tower Avenue
Medford, WI 54451

Dear Mr. Hansen:

This is further to your letter of 9 November 1984 which provided additional information regarding your Freedom of Information Act (FOIA) request dated 6 October 1984, the subject of which was the IBM Lucifer System.

Our initial search, in response to your 6 October FOIA request, was negative, as we advised you in our 7 November letter. However, equipped with the additional information provided in your

letter of 9 November, we were able to conduct a more thorough search of our records. We have now completed our re-processing of your request under the provisions of 5 U.S. Code 552, the FOIA.

One document responsive to your request was located as a result of our second search. That document, which is a handdrawn diagram of a version of the IBM Lucifer System, is completely UNCLASSIFIED and is enclosed in its entirety with no deletions. While the diagram is labelled "Figure 2" and appears to have been part of a larger document at one time, we are not in possession of the remainder of the document. IBM had no objection to our providing you this diagram, which that company pro-

vided us in 1973. Since search and reproduction costs were minimal, this diagram is yours free of charge.

While we normally do not answer questions or generate additional information under the FOIA, which requires only the provision of identifiable existing records responsive to a request, we have decided in this case to make an exception and provide you the following additional information which some of our employees recall about the IBM Lucifer System. We do this as a courtesy to you and in order to avoid further misunderstanding as to the purported use of a Lucifer system by NSA. All of this information is UNCLASSIFIED.

Lucifer was never adopted by NSA, nor

do we have any knowledge of the numbers "666" in any context to do with this Agency.

You appear to be seeking information regarding the evolution of Lucifer into DES. We believe IBM designed DES with borrowings from the Lucifer logic. NSA assessed early versions of DES and suggested improvements to IBM. NSA agreed that DES was adequate for protection of UNCLASSIFIED national security-related information.

The enclosed diagram and the above are all the information NSA has on LUCIFER. However, we believe Horst Feistel's original LUCIFER design was published in Scientific American, so there should be more information concerning

it in the public domain.

We hope this information is of assistance to you and we regret any inconvenience caused by our inability to locate this information in our initial search. We assure you it was completely unintentional.

Sincerely,

J.C. Sharp

for M.J. LEVIN

Chief Information Policy

U.S. DEPARTMENT OF JUSTICE

Washington, D.C. 20530

APR 4 1984

Linne' Hansen
W 2856 Tower Avenue
Medford, WI 54451

Dear Linne' Hansen:

Your letter of March 1, 1984, asks if a '666' prefix is used in conjunction with the social security number in computer systems operated by the Department of Justice (DOJ).

The Justice Management Division operates automated personnel and payroll systems for the DOJ, excluding the Federal Bureau of Investigation. The social security number is one of the key elements used to control access to information

protected by the Privacy and Security Act.

Accordingly, I must respectfully decline to answer your question as it concerns the nature of critical automated data elements used for protected access control.

Sincerely,

ANTHONY C. MOSCATO

Director

Finance Staff
Office of the
Controller

Justice Management
Division

INTERNAL REVENUE SERVICE

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20224

Date: Feb 28 1985

Mr. Linne' Hansen
West 2856 Tower
Medford, WI 54451

Dear Mr. Hansen:

This is in response to your Freedom of Information Act request.

We contacted the functional areas within Internal Revenue Service involved with computer processing. None were knowledgable of the "IBM Lucifer System", nor were they aware of a "666 flag". Therefore, we were unable to locate any documents responsive to your request.

The Internal Revenue Service publishes a notice of its systems of record. The most recent listing is cited in the

Federal Register Privacy Act Issuances, 1982/83 COMP, Volume 2, Book 2, pages 1447-1496. This document, which is available in most public libraries, may be helpful to you.

Sincerely yours,

A.W. PERRETTO

for P.A. FAUCONNET

Chief, Section 11
Public Services
Branch

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

EMPLOYER'S TAX GUIDE CIRCULAR E

as revised Dec. 1977

Box 12-IRA codes for IRS use.- If box 6 is an IRA payment, enter 666. Identify the kind of payment by showing one of the following code numbers after 666: 0 for normal; 1 for premature (other than for disability or death); 3 for disability; 4 for death; and 6 for other. (For example, 6663 for disability.)

- -

1980 Instructions for Forms W-2 and W-2P

Box 14.-IRA codes- If box 9 is an IRA payment, enter 666. Identify the kind of payment by showing one of the following code numbers after 666: 1 for premature

(other than disability or death); 2 for roll-over; 3 for disability; 4 for death; 6 for other; 7 for normal; 8 for excess contributions; and 9 for transfer to an IRA for a spouse, incident to a divorce. (For example, 6663 for disability.)